

Steiner-Liff Textile Products Co. and Franklin D. Gunter. Case 26-CA-8483

January 13, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On August 7, 1981, Administrative Law Judge Richard A. Scully issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Decision of the Administrative Law Judge.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge: This case was heard by me in Nashville, Tennessee, on March 2 and 3, 1981. Pursuant to a charge filed on June 12, 1980, by Charging Party Franklin D. Gunter, a complaint was issued by the Regional Director for Region 26 of the National Labor Relations Board on July 30, 1980. The complaint alleges that Steiner-Liff Textile Products Co. (the Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (the Act), by discharging Franklin Gunter because he engaged in union and/or other concerted activity protected under the Act. Additionally, it alleged that on several occasions the Respondent interrogated an employee concerning the union activities of its employees in violation of Section 8(a)(1) of the Act. The Respondent's timely

answer denied that it had committed any violations of the Act.

Upon the entire record, my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits that it is engaged in the business of recycling textile products at its facility in Nashville, Tennessee, and that annually in the course of that business it has sold and shipped from its Nashville facility directly to points outside the State of Tennessee products, goods, and materials valued in excess of \$50,000. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that the Amalgamated Clothing and Textile Workers Union, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

For approximately 6 years the Respondent has maintained an employee representative program, wherein employees of the various shifts or departments of its Nova Fill Division have elected representatives to meet with company management and owners on a periodic basis, usually once a month, to present complaints, grievances, and suggestions concerning plant operations and to facilitate communications between management and employees. Although it does not appear that the employee representatives operated under a formal charter or bylaws, that they had any officers, or that they had any written agreement with the Respondent, it is clear that the employee representatives presented proposals to management concerning wages, hours of employment, and working conditions both at the monthly meetings¹ and through direct contacts with supervisors,² and that the Respondent took action on those proposals.³ In addition, there was uncontradicted testimony from Franklin Gunter that, while acting in his capacity as an employee representative, he undertook to represent fellow employees in the presentation of grievances to the Respondent on at least two occasions.⁴

¹ Although minutes of all employee representative meetings were not maintained, the minutes of one such meeting which were typed up, indicate that the representatives' proposals involved, *inter alia*, adjustments in the payment of various bonuses, increasing accumulated sick leave, modification of existing vacation policies, modification of the existing profit-sharing program, modification of overtime policies, a general wage increase, modification of existing health insurance benefits, and monitoring of the way supervisors treat employees.

² Franklin Gunter gave uncontradicted testimony that upon being selected employee representative he was successful in having the maintenance department's lunch period extended from 10 to 20 minutes after raising the matter with Maintenance Superintendent Heinz Tews and Production Manager Hans Deligne.

³ Respondent's vice president of personnel, Louis Gangi, testified that the majority of the problems brought up by the employee representatives have been corrected and that while the Respondent has not negotiated with the employee representatives, employee benefits have been expanded as a result of information received from them.

⁴ Although the Respondent's production manager, Hans Deligne, denied that the employee representatives have any authority of any kind,

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Section 2(5) of the Act defines the term "labor organization" as:

... any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Supreme Court has held that the term "dealing with" in this definition is not the same as and is broader than the term "bargaining with."⁵ Consequently, the fact that the employee representatives did not engage in collective bargaining with the Respondent is not material. They did deal with the Respondent concerning such matters enumerated in Section 2(5) as grievances, wages, hours of employment, and conditions of work. This is sufficient to constitute a labor organization under the meaning of the Act.⁶ Accordingly, I find the employee representatives to be a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Discharge of Franklin Gunter

It is alleged that Franklin Gunter, who is also known as "Dee Gunter," was discharged by the Respondent because he engaged in union and/or other concerted activities protected by the Act. The Respondent denies this and contends that Gunter was discharged because of his conduct on the job and because he threatened to beat up a supervisor at the plant. Inasmuch as there is evidence in the record tending to support the Respondent's position, this is a "mixed motive" case which must be analyzed in accordance with the Board's decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

During the spring of 1979, the Union began a campaign to organize employees at the Respondent's Nova Fill plant. Employee James Richardson began the campaign and enlisted the assistance of Gunter who obtained the signatures of day-shift employees on union authorization cards. During the campaign, Gunter and two other employees had a conversation with Production Manager Hans Deligne in which Gunter explained that their primary reason for supporting the Union was to get Maintenance Superintendent Heinz Tews, who Gunter described as constantly threatening to fire or cut the pay of maintenance employees, off of their backs. During this conversation, Deligne stated that he would resolve the

employees' problems if they would "help to turn the election . . . the company way." Gunter agreed to work on behalf of the Company against the Union and immediately ceased his union support. He made a sign stating "Vote No Union," which he put up in the shop and told fellow employees that Deligne felt he could resolve their problems without a union and that he should be given an opportunity to do so. Gunter continued to campaign against the Union until election day and served as the Company's observer at the election. The Union was defeated in the election.

Gunter's testimony concerning the union campaign, his actions during its course, and his reasons for acting as he did is uncontradicted. Although there are other aspects of his testimony discussed below, which I do not credit, I find that the foregoing events occurred as described by Gunter.

The General Counsel contends that after having secured Gunter's assistance in defeating the Union, Deligne failed to fulfill his promise to resolve the employees' complaints. As a result, sometime in December 1979, Gunter again began to speak out in favor of bringing the Union into the plant. It was because of this renewed prounion activity, the General Counsel contends, that Gunter was discharged a short time later.

Respondent's letter of January 29, 1980, informing Gunter of his discharge states in pertinent part:

Since your employment, your attitude toward the company, its supervisors and practices has taken different courses at different times. At one time, you were strongly opposed to the company and its practices. You then changed your attitude and became very cooperative with the company and agreeable with its practices.

It now appears that you have again changed your attitude by your actions toward management, and your constant complaining and criticism of the company would indicate that you are a very unhappy person.

While it is arguable that what is being referred to in the letter is Gunter's changing position with respect to his support for the Union, other factors convince me that Gunter's support for the Union was not a factor in his discharge.

The discharge on January 29, 1980, was 7 months after the union election. During the campaign, preceding the election, Gunter had switched his allegiance from the Union to the Company, encouraged other employees to vote against the Union, and had served as the Company's election observer. There is no evidence that Gunter was ever one of the leading union advocates at the plant or that, apart from soliciting signatures on authorization cards, he was particularly active on the Union's behalf before he switched his support to the Company. There is also no convincing evidence in support of the contention that Gunter's prounion activity increased noticeably just prior to his discharge. Gunter testified that he went to Deligne in December 1979 and told him that he had had adequate time to correct the problems and that Gunter felt a union was needed. Although he was not questioned

it appears that Gunter's presentation of grievances resulted in the reduction of an employee's suspension in one case and the reinstatement of a discharged employee in another. There was no indication that Gunter was ever criticized or told that he had overstepped his authority by having participated in presenting these grievances to the Respondent. There was nothing other than his position as employee representative that would have involved him in these grievances.

⁵ *N.L.R.B. v. Cabot Carbon Company and Cabot Shops, Inc.*, 360 U.S. 203 (1959).

⁶ *South Nassau Communities Hospital*, 247 NLRB 527 (1980); *Easy-Heat Wirekraft, Division of Bristol Products, Inc.*, 238 NLRB 1695 (1978).

about this conversation, Deligne testified credibly that no one ever spoke to him after the election concerning Gunter's support for the Union. On the other hand, Deligne testified that he assumed from comments made to him by Gunter's coworkers to the effect that he "was on the rampage again," that Gunter was talking in favor of getting a union into the plant. According to Deligne, he heard such reports on several occasions going back to as soon as 4 weeks after the union election. Employee Thomas Frost testified that he went to work in the maintenance department at the Nova Fill plant in August 1979, and that Gunter began to talk to him about a union shortly after he arrived. He also testified that he has had conversations with three or four other employees about getting a union in the plant from the time he started work up until the time of the hearing. Although Frost testified that during a conversation in January 1980 Gunter had said he was going to work "extra hard" to get a union in, there is no evidence that Gunter at any time between the election and his discharge ever did anything more than discuss a union with other employees. It is not even clear in these discussions that Gunter was always necessarily in favor of a union.⁷

The evidence does not establish that Gunter's union activity was such that his discharge in January 1980 could be considered "a message" to other employees not to support a union or that union activity was a motivating factor in the Respondent's decision to discharge Gunter. I do not find that Gunter was discharged because of union activity.

In May or June 1979, Gunter was elected as the employee representative by the day-shift employees of the production and maintenance departments and served in that capacity until his discharge. It does not appear that the duties of the employee representatives were specifically delineated, but it is clear that Gunter took an expansive view of his role. In addition to his attendance at, and participation in, the monthly meetings with the owners and management, as discussed above, he also presented complaints and suggestions to Tews and Deligne and represented employees with grievances. Respondent's second-shift production superintendent, George Corbitt, Jr., testified that he had observed Gunter at employee representative meetings and that Gunter made more complaints and statements than other representatives. He stated that Gunter was "more vocal because to me he probably thought more of the employees" and described Gunter's attitude at the meetings as a "problem." Heinz Tews testified that Gunter often complained to

him about the way he was directing employees in the maintenance departments. Hans Deligne also testified that Gunter complained to him about how hard Tews was working maintenance employees, showing favoritism toward certain employees, and his being unfair in the assignments of overtime.

The letter given Gunter at the time of his discharge refers only to his "attitude toward the company" as the basis for his termination. Complaints and criticism of the Company, if warranted, were obviously a part of the activities and responsibilities of the employee representatives and are activities protected under the Act. The Respondent has not offered any evidence which would establish that the complaints and criticism referred to in the letter were separate and apart from the complaints and criticism presented by Gunter in his capacity as an employee representative or that such complaints and criticism were completely lacking in foundation. Accordingly, I find that the General Counsel has made a *prima facie* showing sufficient to support the inference that Gunter's protected conduct as an employee representative was a motivating factor in the Employer's decision to terminate him.⁸

Under *Wright Line, supra*, the burden now shifts to the Respondent to demonstrate that Gunter would have been discharged in the absence of the protected conduct. The Respondent contends that Gunter was discharged because he had become increasingly difficult to get along with at work, which had caused his immediate supervisor to threaten to quit, and because he had threatened to beat up another supervisor at the plant.

At the outset, the Respondent is faced with the fact that its January 29, 1980, letter, informing Gunter of his discharge and purportedly outlining the reasons, makes no reference to any threat and speaks only in general terms about his "attitude" and "actions toward management." Hans Deligne, who made the decision to discharge Gunter, testified credibly that once he had reached this decision he waited a few days before implementing it and was deliberately vague in assigning the reasons therefor because he was afraid of Gunter's vio-

⁷ Henley Tatum, the first-shift production supervisor called as a witness by the General Counsel, testified that he had overheard Gunter making statements that a union was needed and, on other occasions, that a union was not needed and that he heard such statements within the last 2 months before Gunter was discharged. I found Tatum to be a credible witness and do not consider his statement in an affidavit given to a Board agent to the effect that he had heard Gunter speak in favor of a union during his last 2 months at the plant to be inconsistent with his testimony at the hearing. The affidavit does not say that he did not hear Gunter speak against the Union during that period.

The testimony of Kirk Swick, the first-shift production foreman called as a witness by the General Counsel, was that he knew Gunter was talking about a union within 2 or 3 months of his discharge but that he did not know, from what he had overheard, whether Gunter was for or against a union.

⁸ In this regard, I do not find that Gunter's discharge was the result of his having complained about Heinz Tews or Hans Deligne at the employee representatives' meeting held on Friday, January 25, 1980. According to Gunter's testimony, he was asked by two employees to present their complaints against Tews at the meeting, and did so. He further testified that one of the owners, Abe Freeman, directed Deligne to personally investigate the complaint. Deligne and George Corbitt, who were present at the meeting, denied hearing Gunter make any such complaint. Thomas Frost, one of the employees who allegedly asked Gunter to present the complaint about Tews at the meeting, appeared as a witness at the hearing but was not asked about the incident. I do not credit Gunter's testimony which appears to have been fabricated in order to make it appear that this complaint resulted in his discharge 4 days later. There is nothing which would indicate that the complaint about Tews, if made, was any different than the complaints Gunter had been making about him all along, going back to before the union election.

Corbitt and Deligne testified that a criticism Gunter did voice at the January 25 meeting concerned Deligne and the way he was performing his job as production manager. Deligne denied that this criticism had any bearing on Gunter's discharge. In any event, I find, on the basis of the credited testimony of Elvis Pruitt, that the decision to discharge Gunter had been made prior to the time the employee representatives' meeting was held on the afternoon of January 25, 1980, because Deligne had told Pruitt about it that morning.

lent nature and feared that if Gunter related his discharge to a specific incident or individual, he would retaliate against the person or persons involved. Gunter, while drunk had attempted to beat up both Deligne and Tews at a Christmas party in 1978, he was known to have carried a gun at work, and he had told Deligne about pouring paint on the car of a neighbor he had had trouble with and about getting even with someone who had shot a relative of his. Under the circumstances, I find Deligne's explanation of why the discharge letter was worded the way it was to be credible and his actions in handling the discharge to be reasonable and prudent.

According to Deligne, he began to think seriously about terminating Gunter because of an incident involving Gunter and first-shift Production Supervisor Ray Morris. Gunter went to the parts room near Morris' office to get a gear for a machine he was working on and was observed by Morris crawling on his hands and knees and throwing things around. Morris asked employee Don Bryan whether Gunter was drunk or had been drinking and Bryan, in turn, told Gunter what Morris had asked him. Gunter encountered Morris outside the parts room and took exception to Morris' inquiry as to whether he was drunk. An argument ensued and Morris told Gunter to come into his office, where Deligne was present, "because he had heard enough." After entering Morris' office, the argument continued and intensified to the point where Gunter threatened to beat up Morris. George Corbitt, who was also present, stepped between Gunter and Morris. Things eventually calmed down and Gunter left after refusing to shake hands with Morris.⁹ Deligne, Morris, and Corbitt remained in the office and Morris demanded that Deligne do something about Gunter, Morris having no authority over maintenance employees. Corbitt also questioned Deligne as to whether employees would be allowed to talk to supervisors in the manner Gunter had spoken to Morris. Deligne's response was to the effect that they should let things cool down.

The date of this incident has not been pinpointed. Corbitt and Deligne testified that it was a week before Gunter was terminated, while Morris placed it approximately 2 weeks before. Elvis Pruitt testified that Gunter told him about the incident a week before his discharge and Morris mentioned it to him about 3 days before Gunter was terminated. I find on the basis of this testimony that the incident occurred approximately a week before Gunter was discharged.¹⁰

Deligne finally decided to discharge Gunter when Elvis Pruitt, Gunter's immediate supervisor, threatened to quit rather than to continue working with him. Pruitt had previously complained about Gunter to Deligne and

Tews. Tews had suggested that Gunter be transferred from maintenance to production but Deligne would not do so. Pruitt, who I found to be a straightforward, convincing witness, testified that Gunter was a good worker, that he had no problems with Gunter personally, but that he was constantly needling and threatening to whip other maintenance workers so that nobody wanted to work with him.¹¹ This created problems for Pruitt in scheduling work and made working conditions such that he no longer wished to continue as maintenance supervisor. He had threatened to quit on several occasions due in part to the problems created by Gunter and in part because of the pressures of the job. The last time was within a week of Gunter's discharge when he told Tews and Deligne that he was "giving this foreman's job up because I can't put up with Dee Gunter anymore."

Gunter testified that Pruitt came to him immediately after he was notified of his discharge and told him he did not have anything to do with it, that he had signed the discharge letter only because Deligne wanted him to, and that Gunter should go to the Labor Board about it. According to Pruitt, after Gunter was discharged, he asked Gunter if he was "mad at him," Gunter said, "no," but turned to Deligne and Tews and said, "I'll be looking for you two." Sometime later when Gunter was picking up his toolbox he told Pruitt that he was thinking of getting a lawyer to do something about his discharge and asked Pruitt "do you blame me?" Pruitt responded, "Dee, I don't blame anybody for anything." I credit Pruitt's version of these conversations rather than Gunter's and find that Pruitt had threatened to quit as maintenance supervisor because of the problems Gunter was causing him. Rather than sympathizing with Gunter, as Gunter claimed, I find Pruitt's feeling about Gunter's discharge was evidenced in his response to Deligne upon being told that Gunter was to be let go. He stated, "the sooner, the better."

I find that Gunter's discharge was the result of his subordinate conduct in threatening to beat up Supervisor Ray Morris and his conduct in the maintenance department which had driven Pruitt to the point of resignation and that he would have been discharged for these reasons even if he had not engaged in protected activities in his capacity as an employee representative. The General Counsel has described this case as one of "credibility" and contends that Gunter's testimony should be credited over that of the Respondent's witnesses. I am unable to credit Gunter's testimony concerning most of the significant matters for the reasons discussed above. While I agree that the Respondent's reasons for the discharge were not clearly articulated either in the letter of discharge or the affidavit Deligne gave the Board agent during the investigation of these charges, I believe the reasons for this have been satisfactorily explained and that there is other credible evidence establishing the factors leading to Gunter's discharge.

As noted above, the language in the discharge letter was purposely vague to lessen the possibility of retaliation by Gunter against specific individuals and also to

⁹ My findings concerning what happened in Morris' office are based on the credited testimony of Morris, Deligne, and Corbitt. I do not credit Gunter's version of this part of the incident in which he denied being angry or upset and denied threatening to beat up Morris.

¹⁰ I do not credit Gunter's testimony to the effect that the incident occurred prior to Christmas 1979, over a month before his discharge. This was apparently intended to support Gunter's version of the incident in which he described himself as merely explaining to Morris that another employee was spreading a false report that Gunter was planning on beating up Morris at the Company's annual Christmas party. I find that testimony to be a complete fabrication.

¹¹ Pruitt later stated that one maintenance worker, Thomas Frost, had no problems with Gunter and did not complain about him.

avoid hurting Gunter's chances of obtaining new employment. As for Deligne's affidavit, several factors must be considered. Although he has lived in the United States since 1964, it is obvious that Deligne, who is a native of Germany, still has some problems in expressing himself clearly in the English language. Also, I believed his testimony that he did not spell out in detail the incident involving Gunter's threat to beat up Morris when he gave his affidavit because he did not want to ruin Gunter's record by stating that a threat to a supervisor was the reason for his dismissal.¹² In view of all of the foregoing facts, I find that the Respondent's discharge of Franklin Gunter did not violate the Act.

B. The Interrogation of Thomas Frost

Thomas Frost, who worked with Gunter in the maintenance department during Gunter's last months with the Company, testified that during the month before Gunter was fired, on two or three occasions, Heinz Tews asked him "what's Dee doing?" and "what's Dee stirring up?"; "what's he doing?" and "what's he trying to stir up?" He testified that during the same period Elvis Pruitt would send him and Gunter out on a job and when Frost would return Pruitt would ask, "what's Dee up to?" or "what's going on?"

Frost also testified that on two or three occasions Hans Deligne asked him "Tom, what's Dee up to?" and "what's he stirring up now?" He stated that on one occasion Deligne came up to him while he was installing gears on a machine and asked, "Tom, what's Dee doing? What's he trying to do, get the Union stirred up again in here or what?" This, he said, occurred within 3 weeks of Gunter's termination.

¹² In this regard, there is evidence that Gunter had been a favorite of Deligne, who rehired him over the objections of other supervisors after Gunter had left the Company and was unsuccessful in starting his own business, because Deligne thought he "saw potential in the man" and that he "could make something out of him." Pruitt also testified that he never took any action against Gunter because he felt Gunter got special treatment from Deligne.

Tews, Pruitt, and Deligne each denied asking such questions of Frost. The only conversation that was identified by Frost with any specificity was that with Deligne while Frost was working on a machine and Deligne mentioned the Union. There was, however, no mention of Deligne asking about a union in the affidavit Frost gave a Board agent on June 30, 1980. Frost's explanation that at the time he gave the affidavit he was a "company man" and that he was trying to be nice and was not going to say anything against the Company was neither credible nor convincing. I also doubt that the other conversations he allegedly had with Deligne, Tews, and Pruitt, which were not identified in any detail as to time or place, ever occurred. However, there was evidence that Gunter had failed to return promptly from work assignments and it is entirely possible that what Frost described were inquiries by Gunter's supervisors as to his whereabouts. I do not find that the evidence is sufficient to establish any unlawful interrogations of Frost.

CONCLUSIONS OF LAW

1. The Respondent, Steiner-Liff Textile Products Co., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union and the employee representatives of the Respondent's Nova Fill Division are both labor organizations within the meaning of Section 2(5) of the Act.
3. The Respondent has not violated the Act in any respect alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹³

The complaint is hereby dismissed in its entirety.

¹³ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.